



# Arizona Department of Administration, Procurement Compliance, Administration & Policy Office Publication

This publication is not intended or represented to be the official record of laws and regulations covered under statutes, A.R.S. 41-2501 et. seq., and administrative rules and regulations A.A.C. R2-7-101 et. seq., that constitute the Arizona Procurement Code ("Code"). In the event of a discrepancy between this publication and applicable statute and rule, statute and rule shall prevail.

## PCAP Technical Bulletin No. 017 Revision No. N/A Purchases of \$5,000.00 & Less

### I. Statement:

This technical bulletin is issued to provide guidance for those initiating purchases in accordance with R2-7-D305 "Purchases of \$5,000.00 and less".

### II. Authority:

- A.R.S. §41-2535 - Procurements not exceeding a prescribed amount; small business; simplified construction procurement program;
- R2-7-D305 - Purchases of \$5000 and less;
- R2-7-202 - Delegation of Procurement Authority to State Governmental Units.
- E. O. 2004-29 - Contracting with Small, Women- and Minority-Owned Businesses;

### III. Alternate document/publication resources:

- PCAP technical bulletin No. 003; "Delegation of Procurement Authority." [www.pcap.azdoa.gov](http://www.pcap.azdoa.gov) & [www.azeps.az.gov](http://www.azeps.az.gov)
- Arizona Procurement Code. [www.pcap.azdoa.gov](http://www.pcap.azdoa.gov) & [www.azeps.az.gov](http://www.azeps.az.gov)
- Governor's Executive Order – 2004-29; Contracting with Small, Women- and Minority-Owned Businesses; [www.azgovernor.gov](http://www.azgovernor.gov)
- GAO Technical Bulletin No. 06-3 Statewide Purchasing Card (P-Card)-Purchasing Transaction Limits. [www.gao.state.az.gov](http://www.gao.state.az.gov)

### IV. Definitions:

1. APC: The Arizona Procurement Code.
2. ACPO: Agency Chief Procurement Officer; The person within the State governmental unit, as identified by the State governmental unit head, who is acting under specific, written authority from the state procurement

administrator in accordance with R2-7-202 or any person delegated that authority, in writing, under R2-7-203. The term does not include any other procurement officer or person within a state governmental unit who does not have this written delegation of authority.

3. Buyer: For the purposes of this technical bulletin, buyer means the person delegated authority (no matter what other working titles held) by the agency ACPO to initiate small dollar (\$5000 and less) purchases on behalf of the agency.
4. Impracticable: Webster's New Collegiate Dictionary defines the adjective *impracticable* as incapable of being performed or accomplished by the means employed or at command.
5. State Agency: Any department, commission, council, board, bureau, committee, institution, agency, government corporation or other establishment or official of the executive branch or corporation commission of the State subject to the provisions of the Arizona Procurement Code (A.K.A. State Governmental Unit).
6. Governor's Executive Order: An action by the Governor of Arizona that has the legal authority of law, often dealing with regulations or the workings of agencies.
7. GAO: The General Accounting Office.
8. PCAP: "Procurement Compliance, Administration and Policy office". The central procurement authority for the State of Arizona.
9. Practicable: The abridged 6th Edition of Black's Law defines *practicable* as "that which is performable, feasible, possible".
10. RFQ: Requests for Quotations.

#### **V. Overview:**

By A.A.C. R2-7-D305 Purchases of less than \$5000 "the agency chief procurement officer shall use reasonable judgment in awarding contracts of \$5,000 and less that are advantageous to the state. The agency chief procurement officer may but is not required to request quotations." This administrative rule provides agencies with broad discretion when initiating small dollar purchases, specifically allowing the use of "reasonable judgment" by an Agency Chief Procurement Officer (ACPO) when awarding such contracts as well as providing the option of requesting or not-requesting quotations. An ACPO may further delegate this responsibility to designated buyers within the agency.

This change to the APC does not modify or waive the obligation to purchase from small business as required by A.R.S. §41-2535 or from women- and minority-owned businesses as required by Governor's Executive Order 2004-29.

## **VI. Discussion:**

Agencies are required to make all purchases of \$50,000.00 or less from small businesses, unless it is impracticable to do so. Agencies are also encouraged to recruit women- and minority-owned small business enterprises for small purchases.

Approximately 80% of all government purchases are considered small purchases, accounting for approximately 20% of total government procurement expenditures. In large agencies, the small purchases are often delegated to designated buyers working in the field. Small purchases are often made with purchasing cards, traveling requisitions, petty cash or some other small purchase tool.

By A.A.C. R2-7-D305, agencies may but are not required to obtain competitive quotes when the purchase is estimated to be less than \$5,000.00. This decision is left to the discretion or "reasonable judgment" of the ACPO, who may delegate this authority to buyers within the agency. If a price appears to be excessive or If the buyer believes that price or other factors may be improved enough to justify the added effort, the buyer may seek competitive quotes. If not, the buyer may seek an appropriate source and place the purchase. For example, if the buyer finds an HVAC compressor for \$4,000 and believes the price is too high, the buyer should seek at least one other quote. If in the experience of the buyer, the price seems fair and reasonable, the buyer may negotiate the purchase terms and place the order.

By A.R.S. §41-2535(B), purchases of less than \$50,000 (including purchases of \$5,000 and less) shall be restricted to small businesses "if practicable". The word "practicable" sets a rather high standard. The abridged 6<sup>th</sup> Edition of Black's Law defines practicable as "that which is performable, feasible, possible". Practicable is something which is doable or feasible.

Buying from a small business, when practicable, means that we should make a reasonable and competent effort to find and buy from a small business. According to census data, 98% of all Arizona businesses are small businesses. Therefore, small businesses are readily available to fill most state government requirements.

Executive Order 2004-29 encourages the use of women- and minority-owned businesses. There are many small women- and minority-owned businesses eager to compete for state business. According to a recent census, more than 40% of all small businesses are owned by women and minority entrepreneurs. Therefore, we should actively seek small women- and minority-owned business enterprises when we are seeking a source for a small purchase.

In some situations, finding and buying from a small business may not be practicable. An employee (buyer) working in the field or from a remote office, with an immediate or unique purchasing requirement may not have reasonable knowledge of or access to a small business. For example, a nearby department store may be the only reasonable source for a social services worker in immediate need of clothes for a child client. In other situations, like specialized scientific equipment, software or repair parts, a small business may not be available at all. If a buyer determines purchasing from a small business is impracticable, the determination should be documented, citing the basis for the determination, for the procurement file. This documentation may be done as a single document attached to specific transactions or as a blanket determination, based on recurring and narrowly defined circumstances.

Price may be a factor in determining whether it is practicable to buy from a small business. If a small business offers a price that is substantially higher than that of a large business, the buyer may consider the price offered by the small business unreasonable and seek additional quotes. If the buyer is unable to obtain a reasonable price from a small business, the buyer may issue a written determination that buying from a small business is impracticable and purchase the product or service from a large business.

There is no easy formula for determining when it is not practicable to buy from a small business. It may be impracticable to buy from a small business if none are reasonably available for an immediate purchase. Conversely, it is practicable to buy from a small business even when it may be more convenient to buy from a large business. Price may be a factor in determining whether it is practicable to buy from a small business. If a small business offers a price that is unreasonable or substantially higher than the price offered by a large business, the buyer may make a determination that buying from the small business is impracticable and purchase the material or service from another source.

#### **VII. Summary:**

When making purchases of less than \$5,000, procurement officers shall use reasonable discretion in determining whether or not to obtain quotes. Quotes are not required and are not expected for the vast majority of purchases costing less than \$5,000. Agencies shall find and buy from small businesses when making purchases of less than \$50,000. Agencies shall also actively seek and buy from women- and minority-owned businesses. If it is not practicable to buy from a small business when making a purchase of \$50,000 or less, the reason shall be documented in the form a written determination for each transaction or as a blanket applying to similar recurring transactions within narrowly defined circumstances.

Buying from small women- and minority-owned business enterprises is good for Arizona's economy. Expanding our base of suppliers enhances competition. The law requires that we buy from small businesses when making purchases of \$50,000 and less. Executive Order 2004-29 requires that we offer contracting opportunities to women- and minority-owned businesses. Agency chief procurement officers should ensure that employee's who are delegated authority to make small purchases clearly understand the law, its implications and their duty to buy from small, women- and minority-owned business enterprises. Agency chief procurement officers should also be vigilant in monitoring small dollar purchases for compliance.

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State Procurement Administrator

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Date